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Supreme Court of the United States

October Term, 1943

No. 91

HARRY SITAMORE,
PETITIONER,

vs.

THE STATE OF FLORIDA,
NATHAN MAYO, as State Prison Custodian, and
L. F. CHAPMAN, as Superintendent of the
State Prison at Raiford, Florida,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE INACCURACIES AND INSUFFICIENCIES OF THE PETITION

The brevity with which the opposition to the issuance of the writ sought by the petition might have been dealt with has been prevented by the inaccuracies and insufficiencies of the petition, which necessitate analysis and comparison with the record itself.

The myriad points raised by the original petition as amended, upon resort to appellate proceedings which moved the case from the Circuit Court of Dade County to the Supreme Court of Florida, dwindled to the four assignments of error set forth in the petition, which, in turn, upon the preparation of the petition now before us, again dwindled to but two "questions presented"; and these, with the supporting brief we will deal with later after pointing out the inaccuracies and insufficiencies of the petition.

At the outset it is but fair that this Court should be informed of the character of the person in whose behalf this proceeding is brought. He was, as Judge Barns found him to be, "a professional thief" (tr. 43), who had pleaded guilty, and whose guilt was admitted both by him (tr. 66) and by his counsel in argument. In the light of this important fact, the attempt of counsel to metamorphose the petitioner into an injured innocent, and to appeal to the sympathy of the court should fail to register.

In the "SUMMARY OF MATTER INVOLVED" on page 2 of the petition, it is stated "That he (the petitioner) was denied the advice of counsel * * *". This statement is utterly without record support. In fact, the exact opposite is true as is shown by pages 58 and 59 of the record, from which it appears that the petitioner was offered counsel and voluntarily rejected the proffered service.

On page 3 of the petition we find a further attempt to obtain the sympathy of the court by the observation: "That not being versed in the law, nor having the benefit of counsel, and not understanding the informations filed against him", etc. An effective prevention of this attempt lies in the reflection that the petitioner, a professional thief of admitted guilt was sufficiently versed in the law to know that the informations charged that he stole in the aggregate over $140,000.00 worth of jewelry from four victims, and to admit that he did so, in which candid confession he was later followed by his counsel "versed in the law", who also admitted his guilt.

When the "questions presented" are reached we will find that there is an attempt of counsel for petitioner to reduce what actually occurred to a mere isolated finding that habeas corpus would not reach the situation in which the petitioner and his counsel found themselves, which finding, as we will subsequently show, was perfectly applicable and valid, and in view of what also happened, utterly immaterial.

What also happened was that the supposed agreement claimed to have been made with petitioner by the judge who presided at the trial of petitioner was completely disproved by four witnesses, who were named by petitioner as having been present when the claimed agreement was made. (Testimony of Teaney, Katzentine, Collins and Harrington, tr. 102 to 116.)

Judge Barns, in remanding the petitioner concluded: (tr. 43) "He appears to be a professional thief. His adjudication of guilt should stand", which is a direct and positive adjudication on the merits, as the Supreme Court found it to be when it was asked to clarify its per curiam opinion.

The rather ample clarification contained the following words: (tr. 118)

> "* * * the court, in rendering its judgment of affirmance, considered and decided the appeal on the merits. The testimony on the vital issues presented was in conflict, but there being in our opinion ample evidence to support the judgment entered by the Circuit Judge, who was in a better position than the members of this Court to determine the credibility of the testimony, we entered a judgment of affirmance, in accordance with our established rule governing such cases."

From the foregoing it appears that the petitioner had both his day in court and his remedy by habeas corpus, and the plaint that he was deprived of either is without substance.

THE "QUESTIONS PRESENTED" AS SET FORTH IN THE PETITION

The questions presented as set forth in the petition and in the supporting brief are as follows:

"I.

> Where in the arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the offiicials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same cannot be reviewed under the known forms of procedure in said State?

"II.

> Where on a petition for writ of habeas corpus filed with the Supreme Court of the State of Florida, the facts alleged show a violation of the petitioner's

rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the Judge before whom the writ of habeas corpus was made returnable refused to consider facts dehors the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error coram nobis on such fact?

THE SUPPORTING BRIEF

The brief for petitioner filed in support of his application for the writ reiterates the baseless claim that he was denied the right to counsel, which, as we have seen, is absolutely without factual support.

In the summary of the evidence (pages 3 et seq. of the brief) it is stated: "Proof was also offered showing the Judge of the Criminal Court was dishonest and corrupt", and page 99 of the record was referred to.

On page 97 it appears that the objection to this testimony on the ground of its lack of relevancy was sustained by Judge Barns.

The statement that the Judge "had been in the habit of imposing sentences in criminal cases and setting same aside at the close of the term", credited to page 99 of the record, was stricken by Judge Barns as appears by the same page.

The statement "That said judge was later arrested and tried for bribery and corruption and malfeasance and was caused to resign his office and forfeit right to practice law in Florida" was eliminated from the record by Judge Barns when he sustained the State's objection to its relevancy, as shown by page 97 of the record; and there was no proof whatever of his having forfeited his right to practice in Florida; but by page 110 of the record it appears that the Judge (E. C. Collins) was practicing law in Ocilla, Georgia,

at the time his deposition was taken, and presumably ever since.

"That petitioner was warned not to employ counsel and threatened with punishment if he did", which is credited to page 59 of the record, appears on examination to be a statement by some person, whose name the petitioner could not recollect, and who did not appear to have any authority whatsoever.

The statements attributed to the Judge as shown by page 61 were all denied by the State's depositions, and were severally irrelevant, and the offer made by one Sullivan or Sully to reduce the sentence in consideration of the payment of $15,000.00 or $7,500.00 later, are not either connected with the Judge nor (coming after sentence) could they have affected the legality of the judgments or sentences in any way.

The failure of Judge Collins to deny these rumors, if his statements are to be limited to that extent cannot be warped into a confession that the persons who made them were authorized by him so to do.

It is to be regretted that counsel for petitioner injected these irrelevant and immaterial asides and thereby made it necessary to deal with them in this brief.

THE ARGUMENT IN BEHALF OF PETITIONER

Pages 6 et seq. of petitioner's supporting brief present a voluminous array of authority with which, except for its inapplicability to this case, we have no serious quarrel.

The implication that the pleas of guilty were the result of deception or misconduct finds no support in the record; and the petitioner rested content with his pleas of guilty for over ten years, and through various sets of attorneys and escape and a previous habeas corpus proceeding; and even now both he and his counsel freely and frankly admit his guilt, and consequently the justice of his convictions and his sentences, which were within the statutory limit.

The asserted right to be represented by counsel, as the record shows, was never denied.

Whatever may be said of the right to habeas corpus in the Federal courts and/or in the courts of Florida, the fact remains that whether applicable or not the petitioner got all of the remedy that it could afford, which was a liberal allowance of time to bring forward his witnesses and to put in his testimony and repeated opportunity for his counsel to argue the dwindling points he made, and this is due process of law.

On page 10 appears a not too thickly veiled insinuation that the State is responsible for the failure of the petitioner to obtain the notes taken as shown by page 106 of the record. If this aside is intended to imply that the State or its counsel had anything whatever to do with the failure of the petitioner to procure those notes, it is hereby denied and challenged as false and untrue.

What counsel for petitioner has to say about the judgments being in violation of the Constitution of Florida is all sufficiently concluded by the decision of the Supreme

Court of Florida in its opinion and judgment which appears on page 117 of the record, and is quoted from page 18 of petitioner's brief.

The question propounded by counsel for the petitioner on page 18 of said brief, which is: "IS THE DECISION OF THE SUPREME COURT OF FLORIDA AN ADJUDICATION ON THE MERITS?", is sufficiently answered by what the Court itself said in the quotation which appears on page 18 of the brief immediately under the question.

THE QUESTIONS RELIED UPON BY THE PETITIONER IN THIS PROCEEDING

The petitioner's first question is as follows:

"I.

> Where in arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same can not be reviewed under the known forms of procedure in said State?"

The answer to this question is that the Supreme Court of Florida did not do any such thing, as petitioner's quotation from the Court's clarified decision clearly shows.

On the other hand, the failure of the petitioner's counsel to have the sentences which were within statutory limits, reviewed by the Court in which they were pronounced, is not attributable to either the Supreme Court of Florida nor the State's counsel.

The first question for the numerous reasons set forth herein should be answered in the negative, or found irrelevant.

The petitioner's second question is as follows:

"II.

> Where on a petition for writ of habeas corpus filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the judge before whom the writ of *habeas corpus* was made returnable refused to consider facts *dehors* the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such facts?"

This question is sufficiently answered by petitioner's own brief.

On page 15 of the brief in bold type we find the statement:

"WRIT OF CORAM NOBIS NOT AVAILABLE TO PETITIONER UNDER THE PECULIAR FACTS OF THIS CASE."

This statement is not only accurate, but it is in strict accordance with what the Supreme Court of Florida decided as shown by the now familiar quotation on page 18 of petitioner's brief; and it forms a complete and sufficient reason why the petitioner's second question should also be answered in the negative.

CONCLUSION

In conclusion it is contended that the petition should be denied.

Respectfully submitted,

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